

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No. 24-03859
)
The Neely Group, Inc.) Chapter 11
)
Debtor.) Hon. A. Benjamin Goldgar

**OBJECTION TO MOTION TO EXTEND TIME
TO ASSUME OR REJECT EXECUTORY LEASES**

Concord & Milwaukee Owner LLC and California & Armitage Main Owner LLC (collectively, the “Landlords”), commonly-owned lessors and creditors of the above-captioned Debtor, by and through their undersigned counsel, file this objection (this “Objection”) to the Debtor’s *Motion to Extend Time to Assume or Reject Executory Leases* [Dkt. No. 117] (the “Extension Motion”) and state as follows:

BACKGROUND

1. On March 18, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned case (this “Case”).
2. On May 16, 2024, Old National Bank (“ONB”) filed *Old National Bank’s Amended Motion for Order Granting Relief from the Automatic Stay to Set Off Accounts, or in the Alternative, to Dismiss or Convert Case to Chapter 7* [Dkt. No. 64] (the “ONB Stay Relief Motion”).
3. On June 3, 2024, the Court granted the ONB Stay Relief Motion in part, as to the requested modification of the stay, but continued the remaining questions of conversion or dismissal to June 10, 2024. *See Order Granting in Part and Continuing in Part Old National Bank’s*

Motion for Relief from the Automatic Stay to Set Off Accounts, or in the Alternative, to Dismiss or Convert Case [Dkt. No. 83].

4. On June 10, 2024, based on nonpayment of postpetition rent under the Leases, the ongoing lack of authority for the Debtor to use cash collateral, and the Debtor's inability to reorganize, the Landlords filed their *Amended Motion for Relief from Stay* [Dkt. No. 86] (the "Landlords Stay Relief Motion") seeking modification of the automatic stay to allow the Landlords to continue to pursue non-bankruptcy remedies under two unexpired leases (the "Leases") with respect to the Debtor's locations at 1658 N. Milwaukee and 2020 N. California, Chicago, Illinois (the "Properties").

5. On June 24, 2024, the Court entered the *Order Granting Motion to Modify Stay* [Dkt. No. 107] (the "Stay Relief Order") which modified the automatic stay to allow the Landlords to pursue *in rem* non-bankruptcy remedies against the Debtor under the Leases for the Properties.

6. On the same date, the Court continued and set a briefing schedule on the remainder of the ONB Stay Relief Motion, whether the case should be converted or dismissed, with a status hearing set for August 19, 2024. *See* Scheduling Order [Dkt. No. 104].

7. After the entry of the Stay Relief Order, the Landlords renewed the previously stayed state-court eviction actions (the "State-Court Actions") against the Debtor for possession of the Properties and damages for unpaid rent. Those proceedings remain ongoing as of the date of this Objection.

OBJECTION

8. The Debtor has failed to show cause why the time to assume or reject the Leases should be extended past the statutory deadline established in section 365(d)(4).

9. The Debtor has continued to operate in chapter 11 for months without authority to use cash collateral and continues to fail to meet its basic postpetition obligations, including, for

example, paying rent on unexpired leases. The stay has been lifted with respect to the Leases and the eviction trial in the State-Court Actions is now scheduled for Tuesday, July 17, 2024. At the same time, neither the Debtor nor any putative purchaser have provided any materials to the Landlords that would show any real prospect of a sale in this Case.

10. In light of the foregoing, the Landlords have no reason to believe that the Debtor has or will have either the intention or the ability to successfully assume the Leases in accordance with the requirements of section 365. There would be no point now to any extension of the statutory deadline to assume or reject the Leases and the Debtor has not shown why it should be given additional time to decide how to treat the Leases in this Case.

WHEREFORE, the Landlords respectfully request that the Court deny the Extension Motion to the extent it seeks an extension of the time to assume or reject the Leases.

Date: July 11, 2024

Respectfully submitted,

FOX, SWIBEL, LEVIN & CARROLL, LLP

By: /s/ N. Neville Reid
N. Neville Reid (ARDC #6195837)
Kenneth M. Thomas (ARDC #6324750)
Nicholas E. Ballen (ARDC #6320258)
FOX, SWIBEL, LEVIN & CARROLL, LLP
200 West Madison Street, Suite 3000
Chicago, IL 60606
Ph: 312.224.1200
Fx: 312.224.1201

Counsel to Movants Concord & Milwaukee Owner LLC and California & Armitage Main Owner LLC

CERTIFICATE OF SERVICE

I, N. Neville Reid, an attorney, certify that I served a copy of the attached *Objection to Motion to Extend Time to Assume or Reject Executory Leases* on each entity shown on the below list at the address and by the method shown, on July 11, 2024, at 4:00 p.m.

/s/ N. Neville Reid
N. Neville Reid

By CM/ECF:

Patrick S Layng, U.S. Trustee
Adam G. Brief
Adam.Brief@usdoj.gov

Debtor
Keevan D. Morgan
kmorgan@morganandbleylimited.com

Old National Bank
Adam B. Rome
arome@grglegal.com
abernath@grglegal.com

BRP LaSalle LLC
Joshua Asher Fishman
jfishman@dykema.com

Black Carbon Coalition
Dennis Esford
denny@windycitytrialgroup.com

The UPS Store, Inc.
Michael T. Gustafson
mike.gustafson@faegrebd.com